

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. OS 2008-0027

AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY JOHN ERHARDT REGARDING
ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY COLORADO
FOR EQUAL RIGHTS.**

This matter is before Administrative Law Judge (ALJ) Robert Spencer upon the complaint of John Erhardt that Colorado for Equal Rights (the "Committee") violated the laws relating to reporting of campaign contributions and expenditures.

The Secretary of State received Erhardt's complaint September 5, 2008. Pursuant to Colo. Const. art. XXVIII, § 9, the Secretary forwarded the complaint to the Office of Administrative Courts (OAC) for hearing. Hearing was initially set for September 18, 2008, but continued upon Respondent's request and reset for October 8, 2008. Hearing was held that date at the Office of Administrative Courts. M. Patrick Steadman, Esq. of Mendez Steadman & Associates, represented Mr. Erhardt. Michael Norton, Esq. of Burns, Figa & Will, P.C., represented the Committee.

Issues

The Committee is an issue committee organized to support Amendment 48. As such, it has obligations under Colo. Const. art. XXVIII, § 7 and § 1-45-108, C.R.S. to periodically file reports of contributions received and expenditures made. Erhardt alleged that the Committee violated these obligations by failing on several occasions to disclose the name and address of persons contributing \$20 or more, by failing to disclose the occupation and employer of persons contributing \$100 or more, and by failing to timely report its expenditures. To the extent that the names and addresses of persons donating \$20 or more were unknown to the Committee, Erhardt alleges the Committee failed to forward the non-complying contribution to a qualified 501(c)(3) charitable organization within 30 days, as required by Secretary of State regulations.

The Committee concedes it made some reporting errors, but raises several matters in defense and mitigation. First, it contends that on most of the occasions when it reported an anonymous donation exceeding \$20, the report actually reflected an aggregate of many small cash donations for T-shirt and bumper sticker sales that are not required by law to be individually itemized. The Committee subsequently clarified these donations by filing an amended contribution report. Second, on those few occasions where an anonymous donor contributed more than \$20, the Committee forwarded the donation to a 501(c)(3) organization as permitted by law once the error was brought to its attention. Third, although workload demands and other issues

interfered with timely filing of completed expenditure reports on three occasions, the Committee filed supplemental reports within days of the due date that completely disclosed all expenditures. The Committee asks that in light of its remedial efforts and lack of intent to violate the reporting laws, that no sanction be imposed.

Erhardt does not dispute the Committee's explanation of events. In light of those explanations, the ALJ must determine what violations of the reporting laws have occurred and what sanction, if any, is appropriate for those violations.

Findings of Fact

1. The Committee is an issue committee as defined by Colo. Const. art. XXVIII, § 2(10) in that its major purpose is to support a 2008 ballot issue known as Amendment 48. Amendment 48 is a proposed amendment to the Colorado Constitution defining "personhood" as beginning from the moment of fertilization.

2. Kristi Burton is the registered agent, administrative staff, and spokesperson for the Committee.

3. The Committee is obligated by law to file with the Secretary of State periodic reports of its contributions received and expenditures made. Relevant to this case are the reports due May 1, 2008; June 2, 2008; July 7, 2008; July 21, 2008; August 4, 2008; and September 2, 2008.

4. Ms. Burton was responsible for completing and filing the required reports. She filed the Committee's reports electronically.

5. Ms. Burton had no formal training in the preparation and filing of campaign finance reports, but was self-educated by speaking with Secretary of State staff and reading the Secretary of State's rules and other materials posted to its website.

The Anonymous Contributions

6. As part of its campaign effort, the Committee held frequent fundraising events at churches and other venues. At these events, the Committee sold pro-Amendment 48 T-shirts for \$10 a piece, and bumper stickers for \$1 to \$2 a piece. If prospective donors did not \$10 available to buy a T-shirt, they were invited to donate what they could.¹

7. Donations from T-shirt and bumper sticker sales were generally in cash and seldom if ever in amounts more than \$20. No record was made of the names or addresses of the individual cash donors. If a donor bought more than \$20 worth of items, the donor generally wrote a check that allowed Ms. Burton to identify the name and address of the donor.

8. Rather than itemize the cash proceeds from each T-shirt and bumper sticker sale, Ms. Burton chose to aggregate each event's proceeds and report them as a single anonymous contribution. Anonymous aggregate contributions of this type were

¹ The T-shirts and bumper stickers cost the Committee a fraction of the sale price.

reported in the following amounts on the following dates:

May 1, 2008 report

<u>Amount</u>	<u>Date contributed</u>
\$ 50.00	March 15, 2008
\$ 60.00	April 4, 2008
\$341.00	April 5, 2008
\$ 57.00	April 11, 2008
\$ 98.90	April 13, 2008

June 2, 2008 report

<u>Amount</u>	<u>Date contributed</u>
\$195.00	May 13, 2008

July 7, 2008 report

<u>Amount</u>	<u>Date contributed</u>
\$122.00	June 14, 2008
\$ 20.00	July 1, 2008

August 4, 2008 report

<u>Amount</u>	<u>Date contributed</u>
\$263.00	July 19, 2008

September 2, 2008 report

<u>Amount</u>	<u>Date contributed</u>
\$ 30.00	August 26, 2008
\$226.00	August 27, 2008

9. In addition to the small cash donations that were reported in aggregate form, the Committee received several anonymous cash donations of \$20 or more. The Committee initially reported these as follows:

May 1, 2008 report

<u>Amount</u>	<u>Date contributed</u>
\$ 30.00	March 6, 2008
\$ 25.00	March 25, 2008

September 2, 2008 report

<u>Amount</u>	<u>Date contributed</u>
\$ 20.00	August 26, 2008

10. The Committee became aware of Erhardt's complaint on or about September 8, 2008.

11. On September 10, 2008, the Committee wrote a check to Biblical Concepts and Counseling (BCC), a 501(c)(3) charitable organization, donating a total of \$75 representing the three anonymous donations identified in Finding of Fact No. 9.²

12. On September 11, 2008, the Committee filed with the Secretary of State an adjusted contribution report explaining that each of the anonymous donations described in Finding of Fact No. 8 was in fact an aggregate of individual non-itemized cash donations for T-shirts and bumper stickers, and reflecting account adjustments for the three donations identified in Finding of Fact No. 9 that were donated to BCC.

13. At no time did the Secretary of State notify the Committee that any of its contribution reports failed to comply with the law.

Late Expenditure Reports

14. In the report due June 2, 2008, for the period of April 26 through May 26, 2008, the Committee reported \$2,052.67 in itemized and non-itemized expenditures, representing some but not all of its expenditures during that period. On June 4, 2008, the Committee supplemented its report with an additional 19 itemized expenditures in the total amount of \$15,103.96. On June 7, 2008, the Committee again supplemented its report with an additional 27 itemized expenditures in the total amount of \$8,717.37. Ms. Burton explained that the initial report did not contain all the Committee's expenditures because when she tried to file the report late in the evening of June 2nd, she made an erroneous keystroke entry that caused the data to be erased and she did not have time to re-enter all the data before the report was due.

15. In the report due July 21, 2007, for the period of July 3 through July 16, 2008, the Committee reported no itemized or non-itemized expenditures. On July 30, 2008, the Committee supplemented its report with 31 itemized expenditures in the total amount of \$11,617.45, and \$12.96 in non-itemized expenditures. Ms. Burton explained the supplemental report was necessary because, due to her workload, she did not have time to file the required report by the July 21st due date.

16. In the report due September 2, 2008, for the period July 31 through August 27, 2008, the Committee reported no itemized expenditures and \$31.47 in non-itemized expenditures, representing some but not all of its expenditures during that period. On September 8, 2008, the Committee supplemented its report with 55 itemized expenditures in the sum of \$33,818.09, and an additional \$80.26 in non-itemized expenditures. Ms. Burton explained that she attempted to complete the report early because she was leaving for the Labor Day holiday. However, she encountered difficulty completing a new data field, and had to wait until after she returned before she could obtain instruction from the Secretary of State's office and complete the report.

² The Committee also wrote a check of \$60 to BCC representing three other anonymous donations it had received. Those donations, however, are not the subject of this complaint.

Discussion and Conclusions of Law

Colorado's Campaign Finance Laws

The primary campaign finance law in Colorado is Article XXVIII of the Colorado Constitution, which was approved by the people of Colorado in 2002. Article XXVIII imposes contribution limits, encourages voluntary spending limits, imposes reporting and disclosure requirements, and vests enforcement authority in the Secretary of State. Colorado also has statutory campaign finance law, known as the Fair Campaign Practices Act (FCPA), §§ 1-45-101 to 118, C.R.S., which was originally enacted in 1971, repealed and reenacted by initiative in 1996, substantially amended in 2000, and again substantially revised by initiative in 2002 as the result of the adoption of Article XXVIII. The Secretary of State, pursuant to regulations published at 8 CCR 1505-6, further regulates campaign finance practices.

Required Reports

Colo. Const. art. XXVIII, § 7 contemplates that issue committees will comply with the disclosure requirements of § 1-45-108, C.R.S. of the FCPA. Section 1-45-108(1) of the FCPA, in turn, requires that an issue committee supporting a statewide ballot issue file with the Secretary of State periodic reports of contributions received and expenditures made. If a contribution is in the amount of \$20 or more, the name and address of the contributor is also to be reported. Section 1-45-108(1)(a)(I), C.R.S. If a contribution is in the amount of \$100 or more, the contributor's occupation and employer must be included. Section 1-45-108(1)(a)(II), C.R.S.

Section 1-45-108(2)(a), C.R.S. sets the dates by which the reports must be filed. In accordance with that section, the reports at issue were due May 1, 2008; June 2, 2008; July 7, 2008; July 21, 2008; August 4, 2008 and September 2, 2008. Pursuant to § 1-45-109(2)(a), C.R.S., reports are timely if received by the Secretary of State by close of business on the due date. Reports filed electronically via the internet are due by 11:59 p.m. on the due date. 8 CCR 1505-6, Rule 5.6.a.

The Secretary of State's rules require that all contributions received of \$20 or more during a reporting period be listed individually on the contribution and expenditure report. All contributions under \$20 may be reported in total as non-itemized contributions for the reporting period. 8 CCR 1505-6, Rule 4.1. Furthermore, if the identity of a contributor of more than \$20 is unknown, the contribution may not be retained but must, within 30 days, be donated to any charitable organization recognized by the Internal Revenue Service or transmitted to the State Treasurer for deposit to the unclaimed property fund. Rule 3.9.b.

The Committee Initially Failed to Comply With the \$20 Disclosure Rule

The Committee violated § 1-45-108(1)(a)(I), C.R.S. by reporting individual contributions of \$30 on March 6, 2008 and \$25 on March 21, 2008 as anonymous contributions without disclosing the donors' name and address, rather than rejecting the donations and forwarding them to a 501(c)(3) charity or to the State Treasurer within 30

days as required by Secretary of State Rule 3.9.b.³ When these errors were brought to the Committee's attention by Mr. Erhardt's complaint, the Committee addressed the error by contributing the amount of these anonymous donations to a 501(c)(3) charity.

The ALJ finds no violation in the Committee's aggregation, for reporting purposes, of individual anonymous cash donations of less than \$20. Although the Committee's initial reports made it appear that anonymous donations of more than \$20 had been made, in fact all but three (as noted above) of these represented an aggregation of small donations of less than \$20. Nothing in the FCPA or the Secretary of State's rules prohibit an issue committee from reporting anonymous contributions of less than \$20 as an aggregate number. Although the better practice is to report these aggregate amounts as non-itemized contributions as permitted by Rule 4.1 (and as the Committee ultimately did), the ALJ finds the Committee's initial reports of these small anonymous contributions substantially complied with the reporting laws.

The Committee Initially Failed to Comply With Reporting Deadlines

On three occasions, June 2, 2008; July 21, 2008; and September 2, 2008, the Committee failed to file a complete report of its expenditures when due. The completed disclosures were, however, subsequently filed within days of the due date. Completed disclosures were five days late for the June 2nd report, nine days late for the July 21st report, and six days late for the September 2nd report, for a total of 20 days of late disclosures.

Sanctions

The ALJ is authorized by Colo. Const. art. XXVIII, § 10(1) to impose a penalty of \$50 per day for each day that a statement or other information required to be filed pursuant to § 1-45-108 is not filed by the close of business on the day due. Given that the Committee filed disclosures a total of 20 days late, the authorized penalty that may be imposed is \$1,000 (\$50/day x 20 days). The ALJ, however, has discretion to reduce the penalty when justified. In this case, it appears the Committee had no intention to conceal its expenditures, but that its administrative staff was simply overwhelmed by the work involved in making timely reports. Furthermore, Erhardt concedes that the Committee's corrective actions largely accomplished the purpose of his complaint. Given the Committee's explanations and corrective actions, the ALJ finds that a total penalty of \$150, representing \$50 for each late report, is appropriate.

In addition to the late reports, the Committee also violated Secretary of State rules by not rejecting two anonymous contributions in excess of \$20 and forwarding those contributions to a 501(c)(3) charity, or the State Treasurer, within 30 days. The ALJ, however, finds these errors unintentional and in view of the small amounts

³ The Committee also arguably violated § 1-45-108(1)(a)(I), C.R.S. by accepting the anonymous donation of \$20 on August 26, 2008. However, § 1-45-108(1)(a)(I) is inconsistent with Rule 3.9.b in that the rule requires a donation be rejected only if it is "in excess of twenty dollars (\$20)." Because of this conflict between the statute and the rule, and the fact that the Committee gave the anonymous \$20 donation to charity within 30 days, the ALJ finds the violation, if any, negligible.

involved and corrective action taken, imposes no additional sanction.

Agency Decision

The Committee violated the reporting requirements of Colo. Const. art. XXVIII, §7 and § 1-45-108, C.R.S. of the FCPA by filing late reports of expenditures on three occasions, and violated § 1-45-108 and Secretary of State Rule 3.9.b by accepting two anonymous donations of more than \$20 rather than forward those donations to a charitable organization or State Treasurer within 30 days. A penalty of \$150 is imposed against the Committee for these violations. The Committee shall remit the penalty to the Secretary of State within 30 days of the issuance of this decision.

Done and Signed

October 16, 2008

ROBERT N. SPENCER
Administrative Law Judge

Digitally recorded CR #2

Exhibits admitted:

Complainant exhibits A through N

Respondent exhibits 1 through 11

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above **AGENCY DECISION** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

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on this ____ day of October 2008.

Court Clerk